



DOCKET FILE COPY ORIGINAL

1850 M Street, NW  
Suite 1100  
Washington, DC 20036  
Telephone: (202) 828-7453  
Fax: (202) 822-8990

Jay C. Keithley  
Vice President  
Lawrence H. White & Associates

JUL 16 1996

**ERRATUM**

July 16, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Re: In the Matter of Implementation of Section 302 of the Telecommunications Act of  
1996, Open Video Systems, CS Docket No. 96-46

Dear Mr. Caton:

The Sprint LECs Comments filed yesterday in the above referenced docket were inadvertently filed with an incorrect service list. In order to assure that a true and correct copy is on file we are filing an erratum pleading showing the correct service list. A copy of the Comments were served to parties on the correct service list.

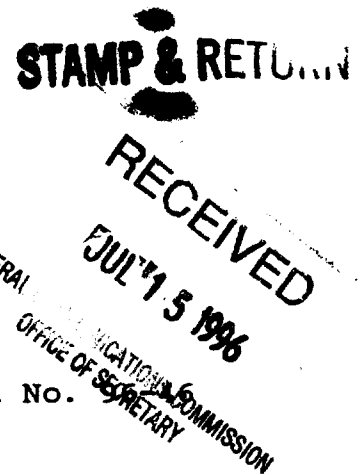
If you have any questions, please feel free to call.

Respectfully,

  
Jay C. Keithley

Attachment

024



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of Section 302 of )  
the Telecommunications Act of )  
1996 )  
 )  
Open Video Systems )

CS Docket No. 96-46

**COMMENTS OF THE SPRINT  
LOCAL TELEPHONE COMPANIES**

The Sprint Local Telephone Companies ("Sprint") submit their comments on certain Petitions for Reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.<sup>1</sup>

**I. National Cable Television Association ("NCTA")**

The NCTA seeks reconsideration of numerous decisions that are set forth in the Order. Of particular concern to Sprint is NCTA's request that the Commission reconsider its decision that LECs need not establish separate subsidiaries for the provision of OVS and that a prohibition on the joint marketing of local telephony service and video offerings is not warranted.<sup>2</sup>

The NCTA raised both of these issues in its comments that were filed with the Commission prior to the Order. The

---

1. See, Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, Second Report and Order, FCC 96-249, released June 3, 1996 ("Order").

2. NCTA's Petition for Reconsideration at p. 21.

Commission considered these comments and nevertheless determined that neither separate subsidiaries nor a joint marketing prohibition for LECs that become OVS providers was necessary or in the public interest.

In both instances the Commission relied heavily on the fact that, in the Telecommunications Act of 1996 (hereinafter, the "ACT"), Congress imposed separate subsidiary requirements on certain telephony activities of the Regional Bell Operating Companies and likewise imposed joint marketing restrictions on certain telephony activity.<sup>3</sup> However, in the creation of OVS in Section 653 of the ACT<sup>4</sup>, Congress imposed no such requirements and the Commission has likewise declined to impose such stringent safeguards. NCTA has introduced no new evidence, nor presented any persuasive argument that the Commission erred in its decision. Its Petition for Reconsideration on this point must be denied.

NCTA also objects to the Commission's conclusion that cable operators, including a cable operator that is also a LEC, may not provide OVS in its cable service areas absent the presence of

---

3. See, Order at para. 246 reciting that Sections 271(e), 272(g) and 274(c) (47 U.S.C. Sections 271(e), 272(g) and 274(c) as added by the ACT) with regard to joint marketing prohibitions.

4. Codified at 47 U.S.C. Section 573.

"effective competition" or by a showing that the provision of OVS by another source is unlikely.<sup>5</sup>

NCTA's argument relies heavily on the first sentence of 653(a)(1) which reads: "A local exchange carrier may provide cable service to its cable service subscribers that complies with this section." NCTA claims, correctly, that a cable operator may become a LEC. However, NCTA then argues that if the cable operator becomes a LEC, then under the plain language of the Act it is free to become an OVS provider without the restrictions imposed by the Commission.

However, NCTA ignores the second sentence of 653(a)(1) which reads:

To the extent permitted by such regulations as the Commission may prescribe consistent with the public interest, convenience, and necessity, **an operator of a cable system** or any other person may provide video programming through an open video system that complies with this section. [Emphasis supplied.]

Obviously, the two sentences must be read together. When they are, it is clear that Congress intended for the Commission to adopt regulations governing when an operator of a cable system can provide OVS in its cable service area. If NCTA's construction was correct, one would either have to ignore the second sentence of the statute or determine that Congress intended that once a cable operator becomes a LEC, it loses its

---

5. NCTA at p. 6.

identity as a cable operator -- notwithstanding that it still provides cable services. Such a tortured reading of the statute cannot withstand even minimal scrutiny and NCTA's requested reconsideration on this issue must be denied.

## **II. AT&T Corp. ("AT&T")**

AT&T seeks reconsideration of the Commission's decision to permit incumbent LECs ("ILEC") to bundle local telephone service with video services.<sup>6</sup> AT&T claims that the ruling will have an anticompetitive affect and raises cross-subsidization concerns. However, the Commission considered AT&T's concerns and rejected them in the Order:

We disagree with AT&T and Time Warner's concern that the bundling of telephone and video services will be anti-competitive, and increase the risk of cross-subsidization of the competitive service by the monopoly service.

AT&T has presented no new arguments or rationale to bolster its arguments and accordingly its Petition for Reconsideration should be denied.

---

6. Petition of AT&T Corp. for Reconsideration ("AT&T") at p. 2.

7. Order, at para 248.

### III. Joint Parties<sup>8</sup>

The Joint Parties seek reconsideration of the Commission's requirements that both the OVS operator and its programming affiliate provide nondiscriminatory navigational devices on the open video system.<sup>9</sup> The Joint Parties correctly point out that the Commission's ruling is contrary to the specific provisions of the ACT and will not serve to foster competition.

The nondiscrimination provisions in Section 653(b) of the ACT are, on their face, exclusively applicable to the OVS operator. There is no basis in the ACT to construe Section 653 otherwise. Furthermore, Sprint agrees with the Joint Parties that:

requiring the programming affiliate effectively to be the servant of competitive programmers would subject the affiliate to substantial costs and a significant competitive disadvantage.... Instead the Commission should allow the affiliate to take steps to differentiate itself from other program providers on the system, through the provision of a proprietary program guide and other means.<sup>10</sup>

Sprint agrees with the Commission that "an open video system operator is not relieved of the non-discrimination provision of

---

8. The Joint Parties are the Bell Atlantic Telephone Companies and Bell Atlantic Video Services Company; BellSouth Corporation and BellSouth Telecommunications, Inc.; GTE Services Corporation and its affiliated domestic telephone operating companies and GTE Media Ventures, Inc.; Lincoln Telephone and Telegraph Company; Pacific Bell; and SBC Communications Inc. and Southwestern Bell Telephone Company.

9. Petition of the Joint Parties for Reconsideration of the Second Report and Order at p. 2.

10. Id.

Section 653(b)(1)(E)(i) if the operator offers a navigational device that works only with affiliated video programming packages."<sup>11</sup> However, imposing the nondiscrimination requirements on the affiliated video programmer is not the appropriate manner to address this issue or to implement the plain language of the ACT. Rather, the appropriate step is to prohibit the OVS operator from providing a navigational device that only works with a programming affiliate. If the OVS operator provides a navigational device, it must interface and function equally with all programmers on the OVS system. If the programming affiliate or any other programmer desires to provide its own proprietary navigational device, it should be free to do so.

#### **IV. Conclusion**

Accordingly, the Commission should reject the Petition of the NCTA seeking reconsideration of the Commission's decision on safeguards to be imposed on LECs that provision OVS and on the ability of incumbent CATV providers to become OVS operators. The Commission should also reject AT&T's Petition seeking reconsideration of the Commission refusal to prohibit bundling by LECs that provide OVS. However, Sprint supports the Joint Parties' Petition seeking reconsideration of the Commission's decision regarding navigational devices and agrees that the nondiscrimination provisions of Section 653(b) only apply to the


---

11. Order at para. 231.

OVS operator, not to the programming affiliate of the OVS operator.

Respectfully submitted,

SPRINT LOCAL TELEPHONE  
COMPANIES

By   
Jay C. Keithley  
1850 M Street, N.W.  
Suite 1100  
Washington, DC 20036  
(202) 857-1030

Craig T. Smith  
P.O. Box 11315  
Kansas City, MO 64112  
(913) 624-3065

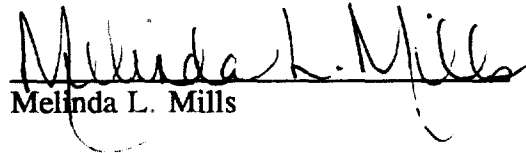
Its Attorneys

July 15, 1996



## CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 15<sup>th</sup> day of July, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of the Sprint Local Telephone Companies" in the Matter of Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

  
Melinda L. Mills

**Regina Keeney\***  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW -- Room 500  
Washington, DC 20554

**Jim Schlichting\***  
Chief, Tariff Division  
Federal Communications Commission  
1919 M Street, NW -- Room 518  
Washington, DC 20554

**Wilbur Thomas\***  
ITS  
1919 M Street, NW -- Room 246  
Washington, DC 20554

**Joel Ader\***  
Bellcore  
2101 L Street, NW -- Suite 600  
Washington, DC 20037

**John W. Pestle**  
Varnum, Riddering, Schmidt & Howlett  
Bridgewater Place  
333 Bridgewater Street, NW, PO Box 352  
Grand Rapids, MI 49501-0352  
Counsel for MIT Communities

**Tillman L Lay**  
Miller, Canfield, Paddock, and Stone  
1225 19th Street, NW  
Suite 400  
Washington, DC 20036  
Counsel for National League of Cities, et. al.

**Michael S. Schooler**  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
Counsel for Cox Communications

**Robert A. Lewis**  
NYNEX  
1111 Westchester Avenue  
Room 1206  
White Plains, NY 10604

**Edwin M Durso**  
ESPN, Inc.  
ESPN Plaza  
Bristol, CT 06010-7454

**James T. Hannon**  
US West, Inc.  
1020 19th Street, NW  
Suite 700  
Washington, DC 20036

Michael S. Schooler  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
Counsel for Comcast Cable

James J. Popham  
ALTS  
1320 19th Street, NW  
Suite 300  
Washington, DC 20036

James D. Ellis  
Southwestern Bell  
175 E. Houston  
Room 1254  
San Antonio, TX 78205

Lucille M Mates  
Pacific Bell  
140 New Montgomery Avenue  
Room 1522A  
San Francisco, CA 94105

Gail Polivy  
GTE Service Corp.  
1850 M Street, NW  
Suite 1200  
Washington, DC 20036

Robert A. Mazer  
Vinxon & Elkins  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004  
Counsel for LT&T

Leslie Vial  
Bell Atlantic  
1320 North Courthouse Road  
8th Floor  
Arlinton, VA 22201

Michael Tanner  
BellSouth  
675 Peachtree Street, NE, Suite 4300  
Atlanta, GA 30375

Lawrence Fenster  
MCI Telecommunications, Inc.  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

Daniel L. Brenner  
NCTA  
1724 Massachusetts Avenue, NW  
Washington, DC 20036

Philip L Verveer  
Willkie, Farr & Gallagher  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20036  
Counsel for NCTA

Mark Rosenblum  
AT&T Corporation  
Room 3245F3  
295 North Maple Avenue  
Basking Ridge, NJ 07920

\* Indicates Hand Delivery